IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

TUESDAY, THE 11TH DECEMBER 2007 / 20TH AGRAHAYANA 1929

CRL.A.No. 1434 of 2006()

SC.409/2002 of ADDL.SESSIONS COURT (ADHOC)-III, THALASSERY

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APPELLANT: ACCUSED:

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1. MANOLI KUNKAN, S/O.AYODAN KUNHAMAN,
   AGED 55 YEARS, MANOLI HOUSE, KOLAYAD AMSOM,
   ALACHERY.

2. MANOLI KUNHAMAN, S/O. CHANDU,
   AGED 33 YEARS, THENIYODAN HOUSE, KELAKAM AMSOM.

BY ADV. SRI.K.V.PAVITHRAN
SRI.JAYANANDAN MADAYI PUTHIYAVEETTIL

RESPONDENTS: COMPLAINANT:

STATE OF KERALA (S.H.O. KELAKAM POLICE
STATION), REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.K.S.SIVAKUMAR

THIS CRIMINAL APPEAL HAVING COME UP FOR ADMISSION ON 11/12/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

V. RAMKUMAR, J.

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Crl.Appeal.No.1434 of 2006

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Dated this the 11th day of December, 2007

JUDGMENT

This appeal is preferred by the two accused in S.C.No.409 of 2002 on the file of the Additional Sessions Court, Thalassery. They challenge the conviction entered and sentence passed against them for an offence punishable under Section 8(2) of the Kerala Abkari Act.

2. The case of the prosecution is that at about 5 p.m. on 4.09.01, both the accused persons who belong to the Kurichya community were found engaged in distilling 4 litres of wash and possessing 3 litres of freshly distilled arrack in a temporary shed situated in a forest area at Kunduthondu in Kelakom amsom and the accused have thereby committed the offence under Section 8 (1) and punishable under Section 8(2) of the Kerala Abkari Act.

3. On the side of the prosecution three witnesses were examined as PW1 to PW3 and 7 documents were got marked as Exts. P1 to P7 and four material objects were marked as MOs1 to 4.

4. After the close of the prosecution evidence, the accused

were questioned under Section 313 (1)(b) Cr.P.C with regard to the incriminating circumstances appearing against them in the evidence for the prosecution. The denied those circumstances and maintained their innocence. They did not adduce any defence evidence when called upon to do so.

5. The learned Additional Sessions Judge-Thalassery as per judgment dated 17.06.06 found the appellants guilty of the offence and sentenced them to rigorous imprisonment for six months each and to pay a fine of Rs.1 lakh each and on default to pay the fine to suffer imprisonment for one month. It is the said judgment which is assailed in this appeal.

6. I heard the learned counsel appearing for the appellants as well as the learned Public Prosecutor.

7. Even though the learned counsel appearing for the appellants assailed the conviction on various grounds, since the conviction has been recorded by the court below after a careful evaluation of the oral and documentary evidence in the case, there does not appear to be any valuable ground to dislodge the said conviction. PW2 who was the S.I. of Police, Kelakam Police Station was the officer who detected the offence. Going by his

evidence, he along with Police party on reciept of a reilable information on 4.9.01 to the effect that the two accused persons were distilling illicit arrack at Kunduthodu, reached the said spot and they saw the two accused persons engaged in the illicit distillation of wash. There were three aluminium vessels with illicit arrack in one and wash in the other two, a lid with a pipe and two cans, all of which were later seized by the police party. Seeing the police party the two accused persons took to their heels. They were, however, apprehended by the police party and arrested at about 5.15 p.m. as evidenced by the Ext.P2 Arrest memo. The police party then extinguished the fire and seized the distilling apparatus as well as the cans. Ext.P1 is the Seizure Mahazar. PW1 is the attester to the Seizure Mahazar. Even though he turned hostile to the prosecution, in the face of the testimony of PW2, the case of the prosecution regarding the search and seizure can be fully accepted. Independent witnesses to Seizure mahazars turning hostile to the prosecution in abkari cases is not a rare phenomenon. Courts are familiar with such witnesses who file out of the witness box as cunning performers calculated to salvage the accused in the dock. Ext.P4 Property

list shows that the properties were produced before the court without much delay. Pursuant to Ext.P5 forwarding note filed by PW2, the Investigating Officer, samples were taken from out of the 3 litres of hot arrack. Samples from the 45 litres of wash were also drawn. The accused were produced before the committal Magistrate. In the course of the investigation PW3 gave Ext.P5 forwarding note, on the basis of which the samples were forwarded to the chemical examiner for analysis. Ext.P6 report shows that the contents of the samples were as alleged by the prosecution. The accused who were thus found in possession of wash as well as illicit arrack against the provisions of the Kerala Abkari Act were rightly convicted by the court below. The said conviction does not call for any interference and is accordingly confirmed.

8. What now survives for consideration is the question regarding the adequacy or otherwise of the sentence imposed on the appellants. While the 1st accused is in custody, the 2nd accused is still on bail. Both the accused belong to Kurichia community. The occurrence was in a forest where the ownership of the land is vested in the State. The appellants were the first

offenders. The 1st accused is aged 56 years and the 2nd accused is aged 34 years. They were evidently obliging some other elusive kingpins.

9. Having regard to the facts and circumstances of this case, I am of the view that the appellants deserve some leniency in the sentence. Accordingly the sentence imposed on them is reduced to rigorous imprisonment for three months and to pay a fine of Rs.1,00,000/- (Rupees One lakh only) and on default to pay the fine, to suffer simple imprisonment for one month.

In the result this appeal is disposed of confirming the conviction and but modifying the sentence as above.

V. RAMKUMAR, JUDGE

sj